

PUBLIC CHAPTER NO. 583**SENATE BILL NO. 1722****By Ketron, Marrero****Substituted for: House Bill No. 1789****By Ulysses Jones, Hardaway**

AN ACT to amend Tennessee Code Annotated, Title 12, Chapter 3, Part 10, relative to purchasing through requests for proposals.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 12, Chapter 3, Part 10, is amended by adding the following as a new section:

Section _____. (a) Any municipality may use competitive sealed proposals to purchase goods and services rather than competitive sealed bids when the municipal governing body, acting under the restrictions and requirements of this section and a procurement code adopted by the governing body, determines that the use of competitive sealed bidding is either not practicable or not advantageous to the municipality. In actual emergencies caused by unforeseen circumstances such as natural or human-made disasters, delays by contractors, delays in transportation, or unanticipated volume of work, purchases through competitive sealed proposals may be made without specific authorizing action of the municipal governing body. A record of any emergency purchase shall be made by the person or body authorizing the emergency purchase, specifying the amount paid, the items and services purchased, from whom the purchase was made, and the nature of the emergency. A report of the emergency purchase through competitive sealed proposals containing all relevant information shall be made as soon as possible by the person or body authorizing the purchase to the municipal governing body.

(b) In the decision to use competitive sealed proposals, the governing body shall follow a procurement code, which must be adopted by the municipality by ordinance before purchases may be made under this section. The code shall contain criteria for purchasing through competitive sealed proposals and procedures consistent with this section for doing so.

(c) The procurement code shall provide that competitive sealed proposals may be used only when qualifications, experience, or competence are more important than price in making the purchase and:

(1) When there is more than one solution to a purchasing issue and the competitive sealed proposals will assist in choosing the best solution; or

(2) When there is no readily identifiable solution to a purchasing issue and the competitive sealed proposals will assist in identifying one or more solutions.

(d) The Municipal Technical Advisory Service of the University of Tennessee's Institute for Public Service, in conjunction with the comptroller's office, shall develop a model procurement code that may be adopted by any municipality to guide the governing body and purchasing agent in making purchases through requests for competitive sealed proposals. The model procurement code shall contain provisions allowing an aggrieved proposer to protest the intended award to another proposer if the protest is filed within seven (7) days after the intended award is announced. The protest must be filed with and decided by the municipal governing body.

(e) Adequate public notice of the request for competitive sealed proposals shall be given in the same manner provided for competitive sealed bids.

(f) Competitive sealed proposals shall be opened in a manner that avoids disclosure of contents to competing proposers during the negotiation. The proposals shall be open for public inspection after the intent to award the contract to a particular proposer is announced.

(g) The request for competitive sealed proposals shall state the relative importance of price and other evaluation factors.

(h) As provided in the request for competitive sealed proposals and in the procurement code, discussions may be conducted for clarification to assure full understanding of, and responsiveness to, the solicitation requirements with responsible proposers who submit proposals determined by the purchasing agent to be reasonably susceptible of being selected. These proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submission and before the intent to award to a particular proposer is announced to obtain the best and final offers. In conducting discussions, the purchasing agent and other municipal personnel may make no disclosure to any proposer of any information derived from proposals submitted by competing proposers.

(i) The award shall be made to the responsible proposer whose proposal the governing body determines is the most advantageous to the municipality, taking into consideration price and the evaluation factors set out in the request for competitive sealed proposals. No other factor may be used in the evaluation. The purchasing agent shall place in the

contract file a statement containing the basis on which the award was made.

(j) A governmental utility board shall have the same rights and be subject to the same restrictions and requirements as apply to a municipal governing body under this section. The governmental utility board must adopt a procurement code by resolution before purchases may be made under this section. For purposes of this subsection (j), a "governmental utility board" shall include a board of public utilities created under Title 7, Chapter 52, and shall also include any other county, metropolitan government or municipal utility board or supervisory body created by private act, home rule charter or local ordinance or resolution. Nothing in this subsection shall otherwise modify or impair any limitations on the contracting power of such governmental utility boards as such powers may exist under applicable law.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: June 11, 2007



RON RAMSEY
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 28th day of June 2007



PHIL BREDESEN, GOVERNOR